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# Western Europe Review

17 January 1979

State Department review completed

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WESTERN EUROPE REVIEW

17 January 1979

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Spain: Military Under Pressure

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Mounting anger and frustration in the Spanish military is a source of growing concern to political and military leaders alike. Deep divisions within the military have come to light as officers of the far right fulminate against the government and democracy.

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Basque terrorists, sensing that this could be the government's weak spot, have launched a direct attack on the Army in hopes of provoking a harsh retaliation that would further polarize the Basques. Key military leaders, however, are aware that overreactions would play into the terrorists' hands and still seem determined to restrain military activities within the bounds of the constitution. Although there clearly are limits on the military's ability to absorb further assassinations of senior officers, many actions remain open to the military short of physically overthrowing the government and the constitution. Armed insurrection seems unlikely unless these other alternatives have failed.

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Military restiveness derives from a wide variety of factors and has been building for some time. The military officer class, which is inherently conservative, is:

- Distressed by the development of democracy in Spain, which they see as encouraging political irresponsibility and extremism, moral laxity, indifference to the Church, labor unrest, and most of the other ills troubling Spain today.
- Frustrated by the military's general loss of stature in society.
- Threatened by the government's moves to shunt known rightists off into noncommand posts and to formulate sweeping military reforms.

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-- Deeply disturbed by the legalization of the Communist Party, by the electoral success and potential role in government of the Socialists and by the government's concessions to regional demands for autonomy. [REDACTED]

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Last year the military was agitated by Basque terrorist depredations against fellow officers in the Armed Police and the Civil Guard--the paramilitary national security forces. Military leaders probably share the conviction of police officials that the government is not supporting police efforts fully because it does not want to alienate regional political groups. [REDACTED]

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### ETA Offensive

In late December the Basque terrorist organization, ETA, fanned military reactions by declaring an "offensive" against Spanish Army leaders. Although ETA had killed two Army officers in Madrid last summer and a Navy officer in the Basque region in October, the terrorists have until recently appeared unable to make up their minds about whether to launch an all-out campaign against the military. In a desperate bid to prevent agreement between Madrid and Basque moderates on regional autonomy statutes, however, ETA has apparently decided to gamble on provoking direct military intervention, or at least a harsh crackdown by the security forces that would compel Basques to choose between the government and the separatists. [REDACTED]

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On 2 January ETA assassinated an Army major in the Basque region and the next day killed the military governor of Madrid. Tensions reportedly ran high in the military during the days immediately following the assaults. At the funeral services for the military governor, some military officers insulted Defense Minister Gutierrez Mellado--who has long been unpopular with the military for his role in supporting the government's liberalization program--and participated in an unscheduled (and apparently unauthorized) funeral march to the cemetery where they were joined by vociferous civilian ultrarightists. Nevertheless, the funeral service itself was disciplined and senior officers stifled the few antigovernment shouts. [REDACTED]

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### Cooler Heads Still Prevail

Rightist hotheads in the military denounce the government as too weak on law and order, and call for the imposition of martial law. More respected military leaders, however, are clearly aware that this would play into ETA's hands. They are not anxious to thrust the military directly into the strife-torn Basque region where they probably would have no more success against the terrorists than the security forces have had. [REDACTED]

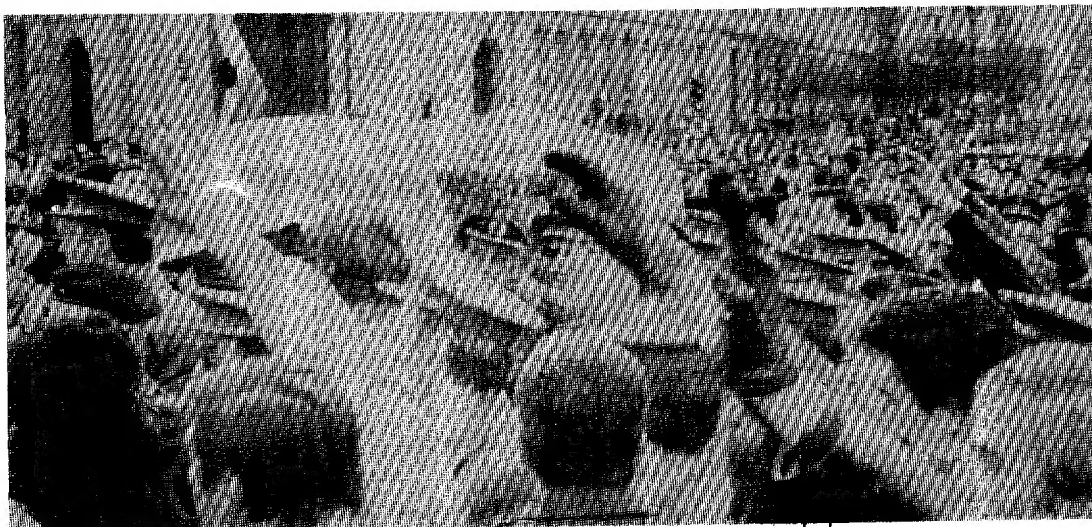
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The promulgation of Spain's new constitution on 29 December, moreover, reduced the possibility of direct military intervention. Under the old laws the King had the power to replace the government, and the generals could have applied pressure on him to do so. Now any change of government must be approved by Parliament; although the majority of military leaders would doubtless prefer a more rightist government, most of them remain extremely reluctant to break the law that they are pledged to uphold. [REDACTED]

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### The Range of Military Options

It is unclear how the armed forces would bear up to a concerted terrorist campaign, however, especially if popular troop commanders were attacked. At a minimum, the military would be likely to exert intense pressure



Rightist demonstration at the funeral of Madrid's military governor

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on the government to crack down on the Basques, using the extraordinary police powers granted last year. In the absence of specific intelligence about ETA members, this would of necessity involve random operations in which innocent people would be hurt. Ultimately, such a course of action seems likely to serve the terrorists' aims by further polarizing the Basque population and driving moderates into the ETA camp. [REDACTED]

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Martial law in the Basque region would be undertaken only as a last resort--a prelude to complete military occupation there along the lines of Franco's harsh subjugation of the region after the Civil War. The Government and military are both well aware that this would be an admission of defeat and that it would raise an international outcry that could spell an end to Spain's bid to "rejoin Europe" after 40 years of isolation. [REDACTED]

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On a more directly political level, the military could press for the removal of Gutierrez Mellado and the equally unpopular Minister of the Interior, Martin Villa. The government would be extremely reluctant to yield, since doing so would be widely interpreted as a cave-in to the military and a sign that Suarez was losing control of the situation. Furthermore, Gutierrez Mellado serves a valuable purpose and would be difficult to replace. If the situation got bad enough, however, both men might be replaced by Army officers who could command the respect of the military. [REDACTED]

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Finally, if the situation deteriorated to the extent that senior military leaders and politicians were being killed with impunity by ETA and military units were openly demonstrating against the government, the generals could attempt to force the King to convince Parliament that the state of emergency required extreme action: postponement of the elections and formation of a strong national coalition for a designated period of time. [REDACTED]

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These alternatives seem more likely, if worst comes to worst, than the traditional pronunciamento--the officer revolts by proclamation of the 19th century--or other forms of open rebellion. [REDACTED]

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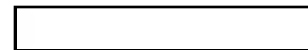
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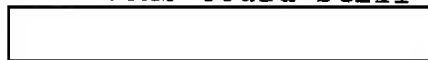
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Italy: Mounting Political Tensions



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The political atmosphere in Italy remains tense as party and labor leaders begin serious consideration of the government's proposed economic recovery plan, which Prime Minister Andreotti submitted to Parliament this week. There are signs that the Andreotti government and the Communist Party leadership are willing to work out compromises and avoid a confrontation over the issue. But the "crisis atmosphere" produced by inter-party polemics over the past several weeks could still trigger the government's collapse.



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Mounting Tensions

A number of recent events--not directly related to the anticipated parliamentary showdown--have interrupted the political truce usually marking the Christmas season in Italy:

- Bitter controversy has surrounded the nomination of new directors for the most important public corporations. Andreotti rejected his State Industries Minister's suggestion to appoint "technicians" to the posts in favor of an earlier agreement on candidates approved by the Socialists and Social Democrats. Both the Communists and Republicans can be expected to oppose this agreement on the grounds that they were not consulted.
- The polemic over Pope John Paul's strong pronouncements on two sensitive issues--divorce and abortion--threatens to disrupt an emerging consensus among both Catholics and non-Catholics on the need for improved Church-State relations in Italy. Anticlerical politicians view the Pope's statements as an attack on Italy's liberalized divorce and abortion laws, and are calling for a halt in the current negotiations for the revision of

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the Concordat governing relations between Rome and the Vatican. Major party leaders have thus far avoided involvement in the dispute, but if the problem persists they may be forced to take positions that would further weaken the government's majority.

- There has been an upsurge in rightwing terrorism recently, apparently to protest the government's inability to solve the murders last year of several members of the neo-fascist Italian Social Movement. The victims of this terrorism have been primarily leftists and, while the response by the left has been relatively peaceful, a cycle of attacks and reprisals could emerge. Such a cycle would probably heighten recriminations among the parties, making it even more difficult for them to agree on government policies. [REDACTED]

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#### Evidence of Flexibility

Communist chief, Berlinguer, has called the present government inadequate to deal with such tensions and has declared his support for a "government of national unity"--including the Communists--if the current arrangement collapses. But he has also denied rumors that his party intends to use the economic plan to bring about the dissolution of the Andreotti majority. In exchange for their continued support the Communists apparently want a series of government pledges:

- To increase the amount of investment in the depressed Italian south.
- To avoid substantial modifications of the wage indexation mechanism, thus protecting the workers' real wages.
- To increase revenues through improved tax collection rather than reduced spending. [REDACTED]

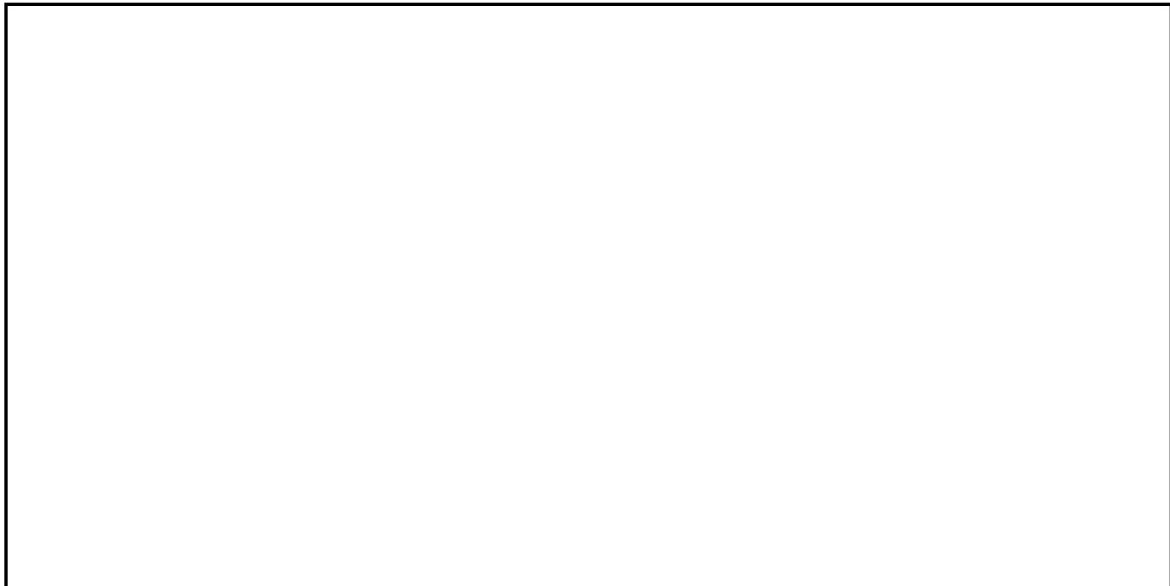
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There is also evidence that Prime Minister Andreotti is trying to avoid a confrontation over the economic plan. Early reports on the final draft's contents indicate a concerted effort by the government to close the gap between its initial proposals and the Communist Party's recommended changes. [REDACTED]

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#### Factors Working Against a Compromise

A convergence of government and Communist aims may be blocked, however, by the demands of the labor unions. Wage restraint by the unions in the impending renegotiation of collective labor contracts is an important element in the government's plan to cut inflation. But key labor leaders have demanded precise government commitments for developmental and job-creating investment as the quid pro quo necessary for moderate union wage demands in the coming contract negotiations. Following labor's negative reaction to the plan in its initial consultations with the government, it appears unlikely that an adequate trade-off can be achieved. [REDACTED]

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It is particularly doubtful whether the unions are prepared to accept the government's target of zero growth in real wages over the next three years. The labor leadership has already committed itself to support the contract demands of the trend-setting metalworkers,

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who have called for substantial wage increases, reductions in working hours, and a role for labor in the determination of their employers' investment and employment policies. [REDACTED]

The leadership of Italy's industrial employers' association, Confindustria, is on record against such labor demands. There are also indications of increased skepticism among Confindustria leaders about the "historic compromise." Business may now be less inclined to work out a labor compromise that would strengthen the Communists' political position. Under these circumstances, inflexibility by both the unions and employers on the wage issue may force the Communists to adopt a tougher line in the parliamentary debate over the economic plan and increase the risk of a stalemate that would bring down the government. [REDACTED]

A Communist spokesman has already criticized the final draft of the plan as containing nothing new. This comes in the wake of a Communist charge that the Christian Democrats are not living up to the agreement on which Communist support of the government is based. [REDACTED]

In addition to these essentially economic problems, prospects for parliamentary approval of the recovery plan are clouded by the intention of the Socialists and Social Democrats to make the debate a test of the government's adequacy. Both parties have declared that Andreotti's Christian Democratic government is incapable of dealing effectively with the many problems facing contemporary Italy. They have already stated their preference for a more broadly based government--a hybrid cabinet--half of which would be Christian Democrats and the other half "exports" acceptable to the other parties comprising the majority. [REDACTED]

### Outlook

The intertwining of economic and political issues in the dispute over the plan is clearly making it difficult for the parties to sort out their priorities. There appears to be sufficient opportunity--and even willingness--on the part of the government and the Communists to come to terms over the economic and technical

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aspects of the plan. But the Communists would be taking a serious political risk if they agreed to a program unacceptable to labor. Thus, the negotiations between labor and the employers' associations over wage policy may hold the key to whether a broader compromise is possible. This, however, is the area over which the parties have the least control. [REDACTED]

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Even if this difficult problem can be resolved, the apparent desire of smaller parties such as the Socialists and Social Democrats to force a showdown over the economic plan may seal the fate of the Andreotti government. The attitudes of these parties also contain an element of ambivalence, however; while they would like to bring down Andreotti, they are uncomfortable with at least one of the possible outcomes--the renewal of stiff Communist opposition to the government. All of these complexities probably account for the protracted nature of the consultations on the economic plan--the outline of the program was first presented in August. The process appears to be nearing an end, however, and a crucial series of consultations now underway--among and within the political parties this week and the labor unions next week--will probably give a clearer picture of the future of the economic plan and the Andreotti government. [REDACTED]

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West Germany: Statute of Limitations on Third Reich Murders

Later this year the West German Bundestag, for the third time since World War II, will address the question of when the statute of limitations for murder expires. A large international audience will be watching and seeking to influence the decision, which will determine whether the West German Government preserves authority to prosecute newly discovered Nazi-era criminals. Debate will be lively and a decision promises to be difficult. Extension of the authority to prosecute, approved by the Bundestag twice in the 1960s, is not assured, but prospects are good that this will be accomplished by abolition of the statute of limitations on murder. The action would have little practical effect because it is unlikely that many previously unidentified Third Reich murderers will be found, but the political problem is large and it is complicated by the lack of a solution consistent with German legal tradition.

Background on Statute of Limitation

Originally part of the Prussian penal code, the principle of a statute of limitations was incorporated into the imperial penal code when the Second Reich was founded in 1871 and it has been on the books ever since. The statute of limitations for murder was 20 years until 1969 when the Bundestag voted to extend it to 30 years in order to assure that Nazi-era murderers found between 1970 and 1980 would not go unpunished. This was the second extension of legal authority by the Bundestag to make possible the prosecution of Third Reich crimes.

The German legal system regards the Third Reich (1933-1945) as a period during which existing law was not applied and, therefore, the clock of the statute of limitations did not run. In addition, the Bundestag decided in 1965--the first extension of legal authority for prosecution of Third Reich crimes--that a vacuum existed between 8 May 1945 and 31 December 1949, a period

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in which German courts were being reestablished and were not fully able to assume jurisdiction. Thus, the 30 year interval decided in 1969 actually began on 1 January 1950 and will expire on 31 December 1979. Bundestag action to extend the possibility of prosecution is not expected before early summer, or possibly autumn, and the months leading up to what is foreseen as a very close vote will be marked by lively discussion within West Germany as well as by considerable international commentary.

#### Other Legal Considerations

West German law provides that crimes on which investigations have begun or preliminary hearings have been held are not affected by the statute of limitations. Therefore, known Third Reich criminals against whom actions have been initiated would not be spared.\* Expiration of the 30-year interval would benefit only newly apprehended or incriminated Nazi murderers against whom no trial or investigation will have commenced by the end of 1979. The number of such persons is believed to be small.

Since the statute of limitations on other Nazi-era crimes has already run out, murder and directly related actions such as complicity in murder are the only Third Reich crimes still liable for prosecution in West Germany. There is an article in Bonn's penal code covering genocide, for which there is no statute of limitations, but it is irrelevant to the present debate because it was adopted in 1954 and cannot be applied retroactively. Thus, the political question of what to do about alleged Nazi murderers who may be caught or against whom new evidence may be produced after the end of this year boils down to the legal question of whether to change once again the statute of limitations on murder.

\*The number currently under investigation is estimated at 37,000. At present, there are 12 trials of Third Reich functionaries accused of murder or complicity in murder taking place in West Germany. The only one that attracts more than regional press coverage is the Maidanek trial in Duesseldorf where 13 former SS staff members of the concentration camp at Maidanek, near Lublin, Poland, are accused of killing 250,000 Soviet prisoners of war, Jews, and internees from other camps. Official investigations of 84,400 accused Nazi criminals have been initiated by West German justice authorities since the war; there have been 6,432 convictions.

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#### Four Legislative Options

A careful assessment by the US Embassy in Bonn of the legislative problem facing the Bundestag describes four options currently being considered by West German politicians. They are:

- Option I. Do nothing to change the law and permit the authority to prosecute newly apprehended or incriminated Nazi murderers to expire on 31 December. Many Bundestag conservatives, but not all, favor this option, arguing that it would be wrong to tamper once again with a basic principle of German law; that few new Nazi criminals are likely to be caught or incriminated after this year; that it is increasingly difficult to obtain convictions because of the difficulties of investigation and the infirmity of prosecution witnesses as well as of the accused; and that prolonged and inconclusive trials of Third Reich defendants are more damaging to justice than the possibility a few such persons might escape punishment.
- Option II. Amend the Bonn penal code to abolish the statute of limitations for prosecution of murder. This approach is favored by many, especially in the government parties, who argue that abolition is a matter of basic justice and exorcising the Nazi past; that West Germany should follow the example of other Western countries that do not have a statute of limitations on murder; that failure to abolish the statute would cause an adverse foreign reaction; and that there is danger that Third Reich criminals who deserve to be prosecuted will go free.
- Option III. Amend the penal code to extend the time limit for prosecution of murder. This is, in effect, the approach taken by the Bundestag twice during the 1960s. The arguments are basically the same as for Option II, but most West German politicians oppose a third extension, favoring instead a choice between Options I and II.

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- Option IV. Amend the penal code to create a new category of offenses, specifically capital crimes of 1933-1945, which would not be subject to a statute of limitations. Although this option would have the merit of singling out Nazi murderers, which could be politically beneficial abroad, it has almost no support at present. Bundestag members rejected it during the debates of 1965 and 1969 on grounds it quite possibly would be found by the Federal Constitutional Court to violate the basic principle of equality before the law and that it would pose problems of distinguishing between Nazi crime and ordinary crime.

#### Issue of Conscience

Although this Bundestag debate will attract widespread domestic and foreign attention, the issue is not one that promises gain to any party or to any West German politician. For that reason, and in view of the higher moral and political considerations involved, the vote in the Bundestag this year will in all likelihood be a vote of conscience with members released from party discipline. This was the case with the earlier Bundestag deliberations on this question. To stress the non-partisan nature of the issue, the government of Helmut Schmidt has indicated it will not submit a legislative proposal, thus leaving the initiative to amend the penal code to individual Bundestag deputies.

The opposition parties, the conservative Bavarian Christian Social Union (CSU) and most of the Christian Democratic Union (CDU), favor permitting the statute of limitations on murder to run out and expect to be joined by the conservative majority of the Free Democratic Party (FDP), the smaller coalition partner. The conservative position has hardened in the past year. Partisan disputes over Third Reich actions of leading politicians with good postwar records have stirred resentment and posed to German conservatives the question of when "overcoming the past"--as reconciliation with Nazi history is known--will finally be concluded. Pleading for extension of authority to prosecute will be the great majority of Schmidt's Social Democratic Party, aligned with younger FDP members and a sizable group of liberals from the CDU. The legal arguments favor the conservatives, the political arguments the liberals.

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Foreign opinion will influence the eventual decision. Were it not a factor, the Bundestag could be expected to let the statute of limitations on murder lapse without providing for further prosecution of Third Reich crimes. West German public opinion would probably favor this if it were a purely domestic decision and might even favor letting the statute lapse in full recognition that their country's reputation would suffer. These feelings only marginally reflect sympathy for ex-Nazis; it is generally believed that the settlement of accounts with the Nazi past has gone about as far as it can go.

At the same time, most West Germans realize that this decision will have international repercussions and that their reputation is at stake. Bonn politicians assume that if they are perceived as indifferent to the need for atonement, this will be interpreted by some European neighbors as sympathy for ex-Nazis or perhaps even as a manifestation of nostalgia for fascism. There will be little appreciation abroad for legal complexities of this decision. Foreign parliaments, politicians, groups representing victims of Nazism, and editors will focus public interest only on the political problem. German readiness to make amends for the Hitler era is still expected, and the West Germans are aware of this international sentiment.

This awareness does not mean that foreign advice, in all cases will contribute usefully to the Bundestag decision. The view that there cannot be a statute of limitations on war crimes or crimes against humanity, presented recently by a leading Soviet jurist as a principle of international law, seems to have made no impact in Bonn. That Anglo-Saxon jurisprudence does not apply a statute of limitations for murder will probably be cited in arguments for Option II, probably with mixed results: this could favorably affect a Bundestag vote to abolish the statute, but would also be opposed as a departure from German legal tradition. Too much emphasis on foreign advice might encourage a stronger reaffirmation of German legal tradition.

### Outlook

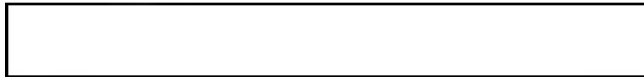
Abolition of the statute of limitations on murder appears, at this point, to be the most likely outcome of the debate. The vote, however, will almost certainly be close,

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unless there is a change in the conservative position. Because of international involvement in this question, the debate will almost certainly stir national feelings. The opposition may find that popular desire to conclude the exercise of "overcoming the past" is stronger than anticipated. If so, the CDU-CSU position in the upper house (Bundesrat) is strong enough to lodge an objection to a Bundestag decision to end the statute of limitations on murder. Such a move by the Bundesrat could only be overridden by an absolute majority (249 of the full 496 members) in the Bundestag. It will probably not come to this, but if it does the Bundestag would face a second decision even more aware that it is the focus of international interest. In this situation, concern for West Germany's reputation would probably be the decisive factor.



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